



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

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Robert G. Burnley
Director

Jeffery A. Steers
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

TWO GREENS/KIRKPATRICK, L.L.C.

(VWP Permit No. 00-V1694)

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and 10.1-1185 between the State Water Control Board and Two Greens/Kirkpatrick, L.L.C., for the purpose of resolving certain violations of the State Water Control Law and Regulations.

SECTION B: Definitions:

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia and described in Va. Code §§ 62.1-44.7 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "NVRO" means the Northern Virginia Regional Office of DEQ, located in Woodbridge, Virginia.

7. "Permit" means Virginia Water Protection Permit No. 00-V1694.

SECTION C: Finding of Facts and Conclusions of Law

1. Virginia Water Protection (VWP) Permit No. 00-V1694 was issued to Kirkpatrick, L.C. with an effective date of December 6, 2001 for a residential development. The Permit authorized 2.86 acres of jurisdictional waters permanent impacts, consisting of 1.11 acres of palustrine forested (PFO) wetlands, 0.40 acres of palustrine emergent wetlands, 860 linear feet of perennial stream channel, and 12,775 linear feet of intermittent stream channel. As compensation for the impacts the Permit required off-site mitigation consisting of 2.60 acres of PFO wetlands creation and enhancement and restoration of 10,400 linear feet of intermittent stream channel riparian buffers, and on-site restoration and enhancement of 1,900 linear feet of perennial stream channels and 1,500 linear feet of intermittent stream channels riparian buffers. The Permit required that construction of the off-site mitigation be initiated within twelve months of the Permit's effective date, or by December 6, 2002. Planting of on-site restoration/enhancement areas was required to be initiated within 24 months of the Permit's effective date, or by December 6, 2003.
2. The Permit was modified to change the ownership from Kirkpatrick, L.C. to Two Greens/Kirkpatrick, L.L.C effective August 16, 2002.
3. DEQ NVRO received a letter dated July 3, 2003 from Two Greens/Kirkpatrick, L.L.C.'s consultant, Greenhorne & O'Mara, Inc., stating that even though DEQ approved the mitigation plan on January 22, 2002, the approval from the U. S. Army Corps of Engineers (Corps) was not received until March 5, 2003. Because of the delay in receiving approval from the Corps and anticipated delays in obtaining approval from Loudoun County Building and Development Department, the deadline for the off-site mitigation site was requested to be extended to March 1, 2004. This request was not granted by DEQ.
4. Subsequently, Two Greens/Kirkpatrick, L.L.C. determined that the Permit needed to be amended to authorize additional impacts resulting from various site plan modifications as well as a redelineation of the wetlands in a portion of the project area. Two Greens/Kirkpatrick, L.L.C. submitted a permit major modification request on August 28, 2003 to authorize additional impacts and a delay in initiating the mitigation. This request was withdrawn on November 26, 2003 because further site plan modifications were required. A second permit modification request was submitted October 22, 2004, but has not yet been approved. Therefore the requirements to initiate off-site and on-site mitigation remain December 6, 2002 and December 6, 2003, respectively, as originally required in the Permit.

5. Neither the off-site mitigation nor the on-site mitigation was initiated in the timeframe required by the Permit in violation of 9 VAC 25-210-50.A.
6. DEQ issued NOV Number 2004-12-NVRO-002 on January 11, 2005 alleging violation of the Permit's mitigation requirements.
7. Two Greens/Kirkpatrick, L.L.C. has agreed to perform supplemental mitigation consisting of 0.51 acres of forested wetlands creation and 1,308 linear feet of riparian buffer enhancement/restoration in addition to completing the mitigation required under 9 VAC 25-210 to compensate for the project impacts.

SECTION D: Agreement and Order

Accordingly the State Water Control Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a), orders Two Greens/Kirkpatrick, L.L.C., and Two Greens/Kirkpatrick, L.L.C. voluntarily agrees that:

1. Two Greens/Kirkpatrick, L.L.C. shall perform the actions described in Appendix A to this Order to remedy the alleged violations described above and achieve compliance with the State Water Control Law and Regulations.
2. Two Greens/Kirkpatrick, L.L.C. shall pay a civil charge of \$4,000 within 30 days of the effective date of the Order in settlement of the alleged violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Either in the transmittal letter or as a notation on the check, Two Greens/Kirkpatrick, L.L.C. shall indicate that this payment is submitted pursuant to this Order and shall include the Federal Identification Number for Two Greens/Kirkpatrick, L.L.C.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Two Greens/Kirkpatrick, L.L.C., for good cause shown by Two Greens/Kirkpatrick, L.L.C., or on its own motion after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified herein, including those matters addressed in the NOV issued on January 11, 2005 as listed above in Section C6. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. Solely for purposes of this Order and subsequent actions with respect to this Order, Two Greens/Kirkpatrick, L.L.C. admits the jurisdictional allegations, but does not admit factual findings and conclusions of law, contained herein.
4. Two Greens/Kirkpatrick, L.L.C. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Two Greens/Kirkpatrick, L.L.C. declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and, for purposes of this Consent Order, to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to enforce this Order.
6. Failure by Two Greens/Kirkpatrick, L.L.C. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority. Nothing in this Order shall be construed as an admission or waiver by Two Greens/Kirkpatrick, L.L.C. in any proceeding other than a proceeding to enforce or amend this Order.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Two Greens/Kirkpatrick, L.L.C. shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or other occurrence beyond the control of Two Greens/Kirkpatrick, L.L.C. Two Greens/Kirkpatrick, L.L.C. shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Two Greens/Kirkpatrick, L.L.C. shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay

compliance or cause noncompliance with any requirement of the Order.

Such notice shall set forth:

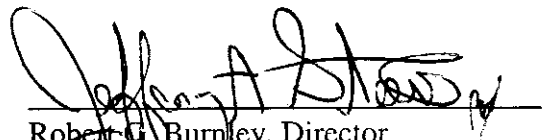
- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within three (3) business days of learning of any condition above, which Two Greens/Kirkpatrick, L.L.C. intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

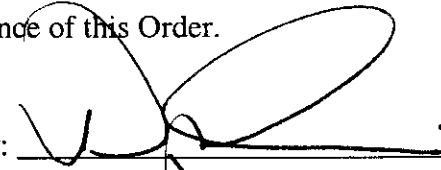
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. Any plans, reports, schedules, permits, or specifications attached hereto or submitted by Two Greens/Kirkpatrick, L.L.C. and specifically approved by the Department in writing pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
11. This Order shall become effective upon execution by both the Director or his designee and Two Greens/Kirkpatrick, L.L.C. Notwithstanding the foregoing, Two Greens/Kirkpatrick, L.L.C. agrees to be bound by any compliance date, that precedes the effective date of this Order.
12. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Two Greens/Kirkpatrick, L.L.C. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Two Greens/Kirkpatrick, L.L.C. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
13. By its signature below, Two Greens/Kirkpatrick, L.L.C. voluntarily agrees to the issuance of this Order.
14. The undersigned representative of Two Greens/Kirkpatrick, L.L.C. certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Two Greens/Kirkpatrick, L.L.C. to this document.

Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Two Greens/Kirkpatrick, L.L.C.

And it is so ORDERED this day of 28 September, 2005.


Robert G. Burnley, Director
Department of Environmental Quality

Two Greens/Kirkpatrick, L.L.C. voluntarily agrees to the issuance of this Order.

By: 
Jim Duszynski
Two Greens/Kirkpatrick, L.L.C.
Date: 7/15/05

Commonwealth of Virginia
City/County of Fairfax

The foregoing document was signed and acknowledged before me this 15 day of
July, 2005, by Jim Duszynski on behalf of Two Greens/Kirkpatrick, L.L.C.


Notary Public

My commission expires: Oct 31, 2007

**APPENDIX A
SCHEDULE OF COMPLIANCE**

1. Two Greens/Kirkpatrick, L.L.C. shall perform supplemental mitigation consisting of 0.51 acres of forested wetlands creation and 1,308 linear feet of riparian buffer enhancement/restoration in addition to completing the mitigation required under 9 VAC 25-210 to compensate for the project impacts.
2. Two Greens/Kirkpatrick, L.L.C shall submit a Permit modification request by May 1, 2005- which shall include all currently planned impacts and the supplemental mitigation.
3. Two Greens/Kirkpatrick, L.L.C shall commence construction compensatory mitigation areas within twelve months of the Permit modification date.
4. The mitigation shall be implemented in accordance with the terms of the Permit as modified by DEQ.